

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 585 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MATHAURDAS KARAMSHI NIRMAL

Versus

JETHALAL BHAVANBHAI

Appearance:

MR ARUN H MEHTA for Petitioner

MR PC KAVINA FOR MR PM THAKKAR for Respondent

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/04/2000

CAV JUDGEMENT

#. This revision seems to have been filed under Section 29(2) of the Bombay Rent Act by the tenant revisionist challenging the order of the Assistant Judge, Junagadh passed in Civil Revision Application No. 7 of 1984 on 10-1-1986.

#. The brief facts necessary for disposal of this revision are as under :-

The plaintiff - respondent filed a Civil Suit No.670 of 1979 in the Court of Civil Judge (JD), Junagadh alleging that the revisionist was tenant in arrears in rent hence, decree for possession and arrears of rent etc. in relation to demised premises was sought. The case has chequered history . However, ultimately the parties to the suit arrived at consent terms and consent decree was passed vide Annexure-A. The plaintiff thereafter filed execution application No.19 of 1983 in the Executing Court for executing consent decree and prayed for possession of the suit premises besides other reliefs. The execution application was objected by the revisionist. However, the executing court rejected all those objections of the revisionist vide Annexure-B. Feeling aggrieved against the order of the executing Court, the revisionist filed Civil Revision Application No. 7 of 1984 in the District Court, Junagadh which was dismissed by the Assistant Judge on 10-1-1986 Annexure-C. The present revision is directed against this order of the Assistant Judge, Junagadh.

#. Shri Arun H. Mehta, learned counsel for the revisionist and Shri P.C.Kavina representing the respondent were heard.

#. Shri P.C.Kavina contended that on one ground or the other ground the revisionist is not permitting the landlord respondent to get the fruits of the decree and that this revision is without any substance which must be dismissed. Shri Arun H. Mehta, learned counsel for the revisionist on the other hand contended that Clause (7) of the consent decree amounts to penal clause and is in the nature of terrorem and hence, the consent decree has become inexecutable.

#. Both the learned counsel for the revisionist as well as the respondent have placed reliance upon pronouncement of the Apex Court in PRITHVICHAND RAMCHAND SABLOK V. S.Y.SHINDE, reported in AIR 1993 SC 1929. Shri Mehta contended that the Apex Court verdict fully applies to the facts of the case. Shri P.C.Kavina also contended to the same effect. It is therefore to be seen whether the Apex Court verdict aforesaid helps the revisionist or the respondent.

#. For proper appreciation of the controversy,

Clause (7) of the translated consent decree is reproduced below :

"7. Defendant admits the suit filed by the plaintiff and admits that he is not in a position to pay the rent as stated above. Defendant gives consent to pass a decree for arrears of rent and tax of Rs.8640/- and for possession of the suit property and defendant agrees that decree be passed according to this consent terms. Defendant agrees to hand over vacant possession of the suit house on 12.6.83 and the court has to give this time frame in the decree and the relationship of owner and tenant comes to an end. However, considering the financial condition of the defendant and considering that the defendant is an old tenant, if the defendant pays in court before 12-6-1983 the entire amount mentioned above, the defendant is to be continued as a tenant as per the terms and conditions of the rent note dated 1-11-69 and that defendant does not have to vacate the suit house and the prayer for obtaining possession of the vacant house is to be waived and that the plaintiff agrees to this."

#. Shri P.C.Kavina rightly contended that similar were the consent terms in PRITHVICHAND case (SUPRA). In that case also, the suit was decided between the parties under consent terms.

#. Clause (1) of the Consent Terms is reproduced below.

"The possession of the suit premises is to be given by the defendant to the plaintiff by 10th October, 1970. If the defendant does not give possession, then the plaintiff is to take possession by execution on the basis of this decree."

#. Clause (3) of consent terms reads as under :-

"The defendant is given a concession that if the defendant paid the entire amount mentioned in clause (2) above, i.e. the amount involved in the suit, future mesne profits, electricity charges, water charges, the rent of the godown, expenses of the suit by 10th October, 1970, the plaintiff will not execute the decree for possession."

##. If comparative study of Clauses (1) and (3) of consent decree in PRITHVICHAND case is made in relation to Clause (7) of the consent decree based on the consent terms, in the instant case, I find that practically two consent terms in both cases are identical.

##. In PRITHVICHAND case one of the consent terms was that the possession of the suit premises is to be given by the defendant to the plaintiff by 10th October, 1970. If the defendant does not give possession then, the plaintiff is to take the possession by execution on the basis of this decree. Thus, Clause (1) provided that in case the tenant vacates the premises voluntarily on 10-10-1970, no execution application is to be moved but on failure of the defendant to vacate the premises by prescribed date, the plaintiff will take possession by execution on the basis of this decree.

##. Clause (3) of the consent decree in PRITHVICHAND case (Supra) is to the effect that the defendant was given concession to pay the entire amount mentioned in Clause (2) of the consent terms by 10th October, 1970, and the plaintiff will not execute the decree for possession.

##. In the case before me also, the consent terms are identical. Here the revisionist admitted the suit filed by the plaintiff and on account of his strained financial condition which prevented him from paying the arrears etc, he agreed that decree for Rs.8,640/- be passed and also a decree for possession of the suit property. The revisionist agreed that a decree be passed in terms of consent terms arrived at between them. He further agreed to hand over vacant possession of the disputed house on 12-6-1983. Thereafter, relationship of landlord and tenant between the parties would come to an end. A concession was however, granted considering the financial condition of the defendant and also considering that the defendant was old tenant that if he pays in the court before 12-6-83, the entire amount mentioned above, viz. Rs.8640/-, the defendant is to be continued as tenant as per the terms and conditions of the rent note dated 1-11-1969 and that the defendant will not have to vacate the suit house and the prayer for obtaining the possession of the vacant house is to be waived and that the plaintiff agreed to this.

##. After careful examination of Clause (7) of the consent decree, it can be safely said that the concession granted to the defendant was only to help him to pay the

arrears by 12-6-1983 and also to handover vacant possession of the disputed house on that date. If the money part of the decree would have been satisfied before 12-6-1983, the defendant revisionist was to be continued as tenant on the same terms and conditions which were incorporated in the rent note dated 1-11-1969 and thereafter, the decree for possession could not be executed.

##. The question for consideration is whether the last portion of Clause (7) of the consent decree rendered the decree inexecutable. On identical facts, the Apex Court in PRITHVICHAND case (Supra) observed that as regards the question whether the parties to the consent decree intended to create or continue relationship of landlord and tenant, if the condition precedent for availing the benefit or concession under Clause (3) of the consent terms is satisfied, the relationship of landlord and tenant continuous but if the tenant fails to comply with the condition precedent for availing of the benefit or concession, the forfeiture operates and the tenant becomes liable for eviction under the decree.

##. Shri Mehta vehemently contended that Clause (7) of the consent decree is penal in nature, hence, the decree has become inexecutable. On similar facts in PRITHVICHAND case (Supra), the Apex Court interpreted Clause (3) of the consent decree in that case and held that Clause (3) of the consent terms could not be said to be penal in character. It was observed that by first two clauses of the consent terms, the decree for possession of the demised premises as well as arrears of rent etc. was passed and the tenant was given a grace period upto the stipulated date viz. 10-10-1970 to comply with the same, failing which, the landlord was given right to put the decree to execution and obtain possession of the premises and recover the arrears of rent etc. through the Court. By clause (3) of the consent terms, however, the tenant was granted concession and if he paid the entire rent etc. due to him by the stipulated date, the landlord will not put the decree to execution for recovery of possession. This stipulation according to the Apex Court was clearly to secure his dues i.e. arrears of rent etc. Depending on the situation in which the landlord is placed, he may grant the concession to the tenant to ensure that huge amount of arrears is not lost. If he is granted such concession and agrees that if the entire arrears is paid by the stipulated date, he will not insist on possession that will not render the clause penal in nature.

##. On the facts of the case before me also, Clause (7) provides that consent decree was passed for arrears of rent and taxes amounting to Rs.8,640/- . The tenant further agreed to handover possession on 12-6-83 and also agreed to pay in court the entire arrears of rent and taxes before 12-6-1983. That compliance was not made by the tenant and inasmuch as he did not pay in the Court a sum of Rs.8,640/- on or before 12-6-83. Consequently, Clause (7) cannot be construed as penal clause nor it has rendered the decree inexecutable. The waiver of the right of the landlord - decree holder - respondent to execute the money decree as well as the decree for possession will not operate against him so as to render the decree inexecutable. This waiver was subject to the condition that the defendant revisionist deposited in court a sum of Rs.8,640/- on 12-6-1983. It was not a case where this concession was in the nature of penalty or to terrorize the revisionist to deposit the amount immediately. On the other hand, the suit was decided on 5-4-1983, whereas, time upto 12-6-1983 was given with the consent of the parties to the revisionist to deposit the amount on or before 12-6-1983. Consequently, in my view, failure of the revisionist to avail of the concession granted by the landlord has rendered the decree executable. In that view of the matter, neither the executing court nor the revisional court below committed any illegality in issuing warrant of possession and confirming the said order by revisional court respectively. The revision, to my mind, has no merit and is liable to be dismissed.

##. The revision is hereby dismissed with no order as to costs.

Date : 7/4/2000 [D. C. Srivastava, J.]

#kailash#